

Serial No. 10/056,743

REMARKS

The present amendment is being filed under a Certificate of Mailing as indicated. An appropriate Petition for Extension of Time accompanies this Amendment and is also filed under a Certificate of Mailing.

Claims 15-24 were subject to a restriction requirement and were not elected. Applicants have cancelled claims 15-24 without traverse and reserve the right to file a divisional patent application to have these claims examined at a later date.

Claims 1-4, 7-9, 12-14, and 25-27 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,425,768 to Carpenter et al.

Claims 5, 6, 10 and 11 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,425,768 to Carpenter in view of U.S. Patent 5,078,746 to Garner.

Referring first to the rejection to claims 1-4 and 7, claim 1 has been amended to provide "a rod connected to said stem and extending therefrom; and a centralizer defining an aperture therein for slidably receiving at least a portion of said rod" The rod 70 in U.S. Patent 5,425,768 is embedded within the hub 44 and does not slidably receive at least a portion of said rod as claimed in claim 1, as amended.

Serial No. 10/056,743

Claim 1, as amended, is thus, not anticipated by U.S. Patent 5,425,768. The rejection to claim 1 as being anticipated by U.S. Patent 5,425,768 is thereby believed to be overcome.

Claims 2-4 and 7 are dependent on newly amended claim 1, and are thus believed to be allowable over U.S. Patent 5,425,768.

Reconsideration of the rejection under 35 USC §102(b) to claims 1-4 and 7 as being anticipated by U.S. Patent 5,425,768 is respectfully requested.

Referring now to the rejection to claims 8, 9, and 12-14, claim 8 has been amended to provide that "a centralizer slidably fitted to at least a portion of said rod". The rod 70 in U.S. Patent 5,425,768 is embedded within the hub 44 and has a tight fit between the rod 70 and the hub 44 is not slidably fitted to at least a portion of said rod as claimed in claim 8, as amended.

Claim 8 as amended is thus not anticipated by U.S. Patent 5,425,768. The rejection to claim 10 as being anticipated by U.S. Patent 5,425,768 is thereby believed to be overcome.

Claims 9 and 12-14 are dependent on newly amended claim 8, and are thus believed to be allowable over U.S. Patent 5,425,768.

Reconsideration of the rejection under 35 USC §102(b) to claims 8, 9, and 12-14 as being anticipated by U.S. Patent 5,425,768 is respectfully requested.

Serial No. 10/056,743

Referring now to the rejection to claims 25-27, claim 25 has been amended to provide for "sliding the rod into the plug to centralize the stem".

The rod 70 in U.S. Patent 5,425,768 is not slid into the distal spacer 40 to centralize the spacer 40 as claimed in claim 25 as amended.

Claim 25 as amended is thus not anticipated by U.S. Patent 5,425,768. The rejection to claim 25 as being anticipated by U.S. Patent 5,425,768 is thereby believed to be overcome.

Claims 26 and 27 are dependent on newly amended claim 25, and are thus believed to be allowable over U.S. Patent 5,425,768.

Reconsideration of the rejection under 35 USC §102(b) to claims 25--27 as being anticipated by U.S. Patent 5,425,768 is respectfully requested.

Claims 5, 6, 10 and 11 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,425,768 to Carpenter in view of U.S. Patent 5,078,746 to Garner.

Referring first to the rejection to claims 5 and 6, claim 1 has been amended to provide "a rod connected to said stem and extending therefrom; and a centralizer defining an aperture therein for slidably receiving at least a portion of said rod." The rod 70 in U.S. Patent 5,425,768 is embedded within the hub 44 and does not slidably receive at least a portion of said rod as claimed in claim

Serial No. 10/056,743

1, as amended. The rod 14 in U.S. Patent 5,078,746 is fitted through trial 12 and threadably connected to plug 36. The plug 36 with the trail 12 attached is placed in the medullary canal and the plug 36 is threadably removed from the rod 14 and the trial and rod are removed. A prosthesis is then inserted in the canal and the tip of the prosthesis (not shown) is aligned with the plug 36. In U.S. Patent 5,078,746 the plug 36 left in place by the trial must be in a precise depth to permit the tip of the prosthesis to be accurately centralized by the plug 36 within the medullary canal. The rod 14 does not provide for an accurate depth positioning of the plug 36. The rod of the present invention can pass through the centralizer and provide for accurate centralizing with an inaccurate depth positioning of the centralizer. The prior art does not provide for this. In neither U.S. Patent 5,425,768 nor U.S. Patent 5,078,746 is a rod connected to said stem (of a prosthesis and extending therefrom; and a centralizer defining a aperture therein for slidably receiving at least a portion of said rod as claimed in claim 8, as amended, nor do they teach or suggest such a construction. The bottom of recesses 14 in neither U.S. Patent 5,425,768 nor U.S. Patent 5,078,746 is not defined by a substantially planar surface extending over substantially all of the bottom as claimed in claim 1, as amended, nor do they teach or suggest such a construction.

Serial No. 10/056,743

Claim 1, as amended, is thus, not obvious over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746.

Claims 5 and 6 are dependent on newly amended claim 1, and are thus believed to be allowable over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746.

Reconsideration of the rejection under 35 §103(a) to claims 5 and 6 as being unpatentable over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746 is respectfully requested.

Referring now to the rejection under 35 §103(a) to claim 10 and 11, claim 8 has been amended to provide that "a centralizer slidably fitted to at least a portion of said rod". The rod 70 in U.S. Patent 5,425,768 is embedded within the hub 44 and has a tight fit between the rod 70 and the hub 44 is not slidably fitted to at least a portion of said rod as claimed in claim 8, as amended. The rod 14 in U.S. Patent 5,078,746 is fitted through trial 12 and threadably connected to plug 36. The plug 36 with the trail 12 attached is placed in the medullary canal and the plug 36 is threadably removed from the rod 14 and the trial and rod are removed. A prosthesis is then inserted in the canal and the tip of the prosthesis (not shown) is aligned with the plug 36. In U.S. Patent 5,078,746 the plug 36 left in place by the trial must be in a precise depth to permit the tip of the prosthesis to be accurately centralized by the plug 36 within the medullary canal.

Serial No. 10/056,743

The rod 14 does not provide for an accurate depth positioning of the plug 36. The rod of the present invention can pass through the centralizer and provide for accurate centralizing with an inaccurate depth positioning of the centralizer. The prior art does not provide for this. In neither U.S. Patent 5,425,768 nor U.S. Patent 5,078,746 is a rod connected to said stem (of a prostheses) and extending therefrom; and a centralizer defining a aperture therein for slidably receiving at least a portion of said rod as claimed in claim 8, as amended, nor do they teach or suggest such a construction. Claim 8, as amended, is thus, not obvious over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746.

Claims 10 and 11 are dependent on newly amended claim 1, and are thus believed to be allowable over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746.

Reconsideration of the rejection under 35 §103(a) to claims 10 and 11 as being unpatentable over U.S. Patent 5,425,768 in view of U.S. Patent 5,078,746 is respectfully requested.

The rejections under 35 USC §102(b) and under 35 USC §103(a) to the claims are believed to be overcome and the removal of the rejections under 35 USC §102(b) and under 35 USC §103(a) to the claims is hereby requested.

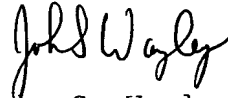
For the above-described reasons it is respectfully submitted that the rejections to claims which have not been cancelled have

Serial No. 10/056,743

been overcome and that all of the claims of the present application which have not been cancelled, namely claims 1-14 and 25-27 are currently in condition for allowance. Early Notice of Allowance is respectfully requested.

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all of the claims of the present application, namely claims 14 and 25-27 are currently in condition for allowance. Early Notice of Allowance is respectfully requested.

Respectfully submitted,



John S. Wagley
Attorney for Applicants
Reg. No. 36,043

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(574) 372-7332
Date: January 20, 2004